

# **DISSENTING REPORT BY INDIVIDUAL LABOR SENATORS**

1.1 The Marriage Equality Amendment Bill introduced by Australian Greens Senator Sarah Hanson-Young seeks to amend the current definition of marriage in the *Marriage Act 1961* (Cth) (Marriage Act) from 'the union of a man and a woman to the exclusion of all others, voluntarily entered into for life' to 'the union of two people, regardless of their sex, sexual orientation or gender identity, to the exclusion of all others, voluntarily entered into for life'.

1.2 Senator Hanson-Young, in her second reading speech, stated that the purpose of the bill is to 'provide equality for same sex couples – (by removing) discrimination under the Marriage Act so that while marriage is still a union between two consenting adults, it is not defined by gender.

1.3 The debate over same-sex marriage is about the function and purpose of the law in relation to marriage and not a discussion that goes to personal motivation and attitudes. We believe every member of our society deserves to be treated fairly regardless of their sexual orientation. It is significant however, that in the campaigns developed around the proposed legislation, the issue has been debated through the prism of fairness and justice. However, there are many deeper issues that motivate our disagreement with the proposition of same-sex marriage.

1.4 The main claim in favour of changing the law is that the current law unfairly singles out people with same-sex attraction by not allowing them to have the same status as people who are married. It is important to note that Australian law has already been changed to give same-sex partners the same legal rights as those who are married and in an increasing number of states to register their unions. The remaining issue therefore is the definition of marriage.

1.5 It is our view that the issue is one of definition, not discrimination. The Federal Parliament removed all inequalities in law and provided appropriate protections regarding property issues for all relationships in 2008 when more than eighty pieces of legislation were amended, with bi-partisan support.

1.6 In our view, changing the law so that marriage includes same-sex unions would be a change to what marriage means. Currently marriage involves a comprehensive union between a man and a woman. Marriage has a place in the law because a relationship between a man and a woman is the kind of relationship that may produce children. Marriage is linked to children, for the sake of children, protecting their identity. It is worthy to note that in California after their legislature experimented with same-sex marriage, the people of California voted against the revisionist concept of marriage.

1.7 Whilst the majority report makes four recommendations supporting the passage of the Bill, we wish to report our concerns about the report and disagreement with all four recommendations.

1.8 It is disappointing that the report has selectively reported on submissions which support the majority view, discounting contrary viewpoints expressed by individuals, organisation, religious and academic institutions.

1.9 We acknowledge that men and women are free to enter into whatever relationships they desire, as long as in doing so they do not endanger others, under law, or in any way demean other relationships. However, we argue that marriage as it is currently defined under the law reflects the wider societal view of that relationship as being between a man and a woman.

1.10 We do not take as a genuine claim, the suggestion that same-sex marriage is a fundamental human right. The European Court of Human Rights has in the past three years twice stated that there is no human right for same-sex marriage. We concur with the view by Australian human rights lawyer, Father Frank Brennan AO, former Chairman of the National Human Rights Consultative Committee, and an expert on discrimination who has written:

Instead of stating 'All persons have the right to marry', the International Covenant on Civil and Political Rights provides: 'The right of men and women of marriageable age to marry and to found a family shall be recognised.' The Covenant asserts: 'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.'

I believe our parliamentarians should maintain this distinction, for the good of future children, while ensuring equal treatment for same sex couples through the legal recognition of civil unions.

In considering whether to advocate a change to the definition of marriage, citizens need to consider not only the right of same sex couples to equality but even more so the rights of future children.

The State has an interest in privileging group units in society which are likely to enhance the prospects that future children will continue to be born with a known biological father and a known biological mother who in the best of circumstances will be able to nurture and educate them.

That is why there is a relevant distinction to draw between a commitment between a same sex couple to establish a group unit in society and a commitment of a man and a woman to marry and found a family.

I think we can ensure non-discrimination against same sex couples while at the same time maintaining a commitment to children of future generations being born of and being reared by a father and a mother. To date, international human rights law has appreciated this rational distinction.<sup>1</sup>

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1 Father Frank Brennan, 'The perils of redefining marriage', *Eureka Street*, 24 November 2010.

1.11 We reject the notion that the Marriage Act as it currently stands discriminates against those who choose same-sex relationships and maintain that the Marriage Act has as its primary purpose the protection and wellbeing of children.

1.12 As members of the Australian Labor Party, we support the principle of a conscience vote on matters of deep social and moral issues.

1.13 In December 2011, the Labor Party National Conference endorsed a position to allow Senators and Members of the Federal Parliament the ability for a conscience vote in respect to same-sex marriage. Labor parliamentarians are at liberty to vote in accordance with their conscience in respect to same-sex marriage should the matter come before the parliament.

1.14 The decision for a conscience vote at the Labor National Conference was taken after robust and extended debate both at the National Conference and at other fora of the Labor Party. The decision to extend a conscience vote on same-sex marriage only applies to the Labor Party. The Labor Party does not have a history of interfering in the machinery and operational methods which other political parties may wish to exercise.

1.15 We therefore find it inappropriate and improper that a Senate committee which itself is representative of all political parties in the Federal Parliament, should seek to interfere in internal party matters and recommend a conscience vote when clearly this is a matter for each political party to decide. The recommendation is intrusive of the processes adopted by other political parties.

**We reject Recommendation 1 and voice our opposition to it.**

1.16 The majority committee report supports the legislation seeking to amend the Marriage Act to recognise same-sex marriage. Little consideration was given by the committee of possible abuses or unintended consequences of the legislation as drafted. For example, two neighbours may elect to marry in order to enjoy favourable taxation benefits or welfare benefits or mutual travel concessions. Two people in a relationship seeking beneficial returns on the back of marriage do nothing for society and the union renders marriage as meaningless. It merely subsumes the meaning of marriage as part of relationships generally.

1.17 There is no interest for the state in endorsing relationships between two people and, therefore, making such relationship public matters. Relationships between two or more people remain in the private realm, not in the public.

**We therefore oppose Recommendation 2 which supports same-sex marriage.**

1.18 The committee has made a recommendation to include an 'avoidance of doubt' clause as a concession to the religiously minded community and their churches. The 'removal of doubt' with respect to the operation of section 47 of the Marriage Act is to reinforce the view that ministers of religion will not be compelled to solemnise same-sex marriages.

1.19 While churches remain at the mercy of legislation for such protection, it does not guarantee this protection, as events in Denmark and Scotland in recent times have shown. Denmark has passed legislation to compel churches to officiate at same-sex ceremonies and Scotland is considering same-sex marriage with no church exemption. In addition to churches and ministers remaining at the mercy of the government of the day, church-run schools could be subject to anti-discrimination laws as to what they can teach on the subject of marriage.

1.20 The re-assurance which the recommendation is attempting to offer is hollow and tactical in nature rather than a matter of substance.

**We therefore oppose Recommendation 3.**

1.21 The final recommendation of the majority report is to support the Bill and pass it into law.

1.22 Throughout the debate on this legislation there has been assertion that there is discrimination against sexual orientation and gender identity. In fact most states have discrimination laws stating these attributes are protected. Opposing same-sex marriage is not an exercise in discrimination nor is it a hurtful belief. If people have genuine beliefs as to what marriage is and its role in the regeneration of society, then people holding these beliefs should not be subject to accusations of discrimination and homophobia.

**We therefore oppose Recommendation 4** and reiterate our opposition to this Bill and the committee's recommendations.

**Senator Mark Furner**  
**Senator for Queensland**

**Senator the Hon Ursula Stephens**  
**Senator for New South Wales**

**Senator Helen Polley**  
**Senator for Tasmania**

**Senator Alex Gallacher**  
**Senator for South Australia**

**Senator Catryna Bilyk**  
**Senator for Tasmania**

**Senator Mark Bishop**  
**Senator for Western Australia**

**Senator Glenn Sterle**  
**Senator for Western Australia**



